IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2158 of 2007

SHIV PRAKASH
V/S
CIVIL JUDGE(J.D.), BIKANER & ORS.

Mr. MS PUROHIT, for the appellant / petitioner

Date of Order : 18.7.2007

HON'BLE SHRI N P GUPTA,J.

REPORTABLE

ORDER

By the impugned order, the learned trial court has dismissed the objection petition, filed by the petitioner under O. 21 rule 97, on the ground of it being having abated, as legal representatives of decree holder were not brought on record.

Learned counsel for the petitioner relied upon the provisions of Order 22 Rule 12, to contend that the provisions do not apply to execution, and therefore, the order is bad.

In my view, the contention cannot be accepted, as the applications filed under Order 21 Rule 97 to Rule 101

CPC are decided as if they were suits, and orders are appealable. All questions including the question of right, title and interest in the property arising between the parties are to be decided therein, and the application is to be filed instead of instituting a suit to establish their right and interest in the suit property. As such, it is not an application in execution, in "*stricto sensuo*", and therefore, the provisions of Order 21 Rule 12 are not attracted, and substitution was required to be made, at the time of dismissal of the proceedings as abated. I am supported in my view, by the judgment of Andhra Pradesh High Court, in Arif Abdul Ghani & Ors. Vs. Shaik Chand & Ors., reported in 1999 AIHC 831. Likewise, this aspect was also considered by me, in the order dated 30.5.2007, dismissing S.B. Civil Writ Petition No.2754/2007 "Sheo Prakash & Anr. Vs. Vishnu & Ors.", wherein by the order impugned therein, the learned trial Court had dismissed the objection petition under Order 21 Rule 97 as abated. Then by another order, the application under Section 151 and under Order 1 Rule 10 CPC, filed by the L.Rs. seeking to be impleaded as party, was dismissed. Both these orders were upheld by me.

In view of the above, I do not find any error in the impugned order. The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

/sushil/